IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6749 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMABEN @ REHMATBEN HASANAND SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6749 of 2002

MR MM TIRMIZI for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/10/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 15/5/2002 passed by the Police Commissioner, Rajkot City and she has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record along with the reply filed by respondent Nos.1 and 2. According to learned advocate for the petitioner, the detaining authority has passed the impugned order of detention relying upon five cases registered against the petitioner under the Bombay Prohibition Act and also relying upon statements of two witnesses. The learned counsel for the petitioner has drawn my attention towards the grounds of detention and has submitted that while passing the impugned order of detention, the detaining authority has referred previous detention order passed against the petitioner which has been quashed and set aside by this Hon'ble Court, which is illegal and on this ground alone, the impugned order of detention is required to be quashed and set aside. In support of his submission, he has relied upon the decision of this Hon'ble Court (Coram ; A.L. Dave, J.) rendered in the case of SALIMKHAN @ CHHOTE JABBAR HANIFKHAN PATHAN VS. STATE OF GUJARAT AND ORS, REPORTED IN 2000(2) G.L.H. 184. Head Note "B" of the said judgement is as under:-

> "B" Gujarat Prevention of Anti-Social Activities Act, 1985 earlier order of detention is set aside by High Court, same could not have been referred to by detaining authority while passing subsequent order of detention It becomes an irrelevant ground - Order of detention quashed."

4. Since the the detaining authority while passing the impugned order of detention, has referred the previous detention order passed against the petitioner under Gujarat Prevention of Anti-Social Activities Act, 1985 which has been quashed and set aside by this Hon'ble Court, the impugned order of detention, in view of the above mentioned judgement of this Hon'ble Court, cannot be sustained and is required to be quashed and set side.

5. The petition is allowed. The impugned order of

detention dated 15/5/2002 passed against the detenu is hereby quashed. The detenu namely Ramaben @ Rahmatben Hasanand Sindhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik